

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOHN NATHAN KATZEEK SR.,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13414  
Trial Court No. 1JU-18-00905 CR

SUMMARY DISPOSITION

No. 0203 — August 4, 2021

Appeal from the Superior Court, First Judicial District, Juneau,  
Phillip M. Pallenberg, Judge.

Appearances: Michael L. Barber, Barber Legal Services, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Madison M. Mitchell, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

John Nathan Katzeek Sr. was convicted, following a jury trial, of attempted first-degree criminal trespass and third-degree criminal mischief after he attempted to break into his neighbor's home and shattered the windows of his neighbor's car.<sup>1</sup> Katzeek now appeals his conviction, arguing that the superior court erred when it

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<sup>1</sup> AS 11.46.320(a)(2) & AS 11.31.100(a) and AS 11.46.482(a)(1), respectively.

excluded testimony regarding an unrelated wrongful death lawsuit that Katzeek's family had brought against the Juneau Police Department.

The discussion about this issue in the trial court proceedings was very brief. Here it is, in total:

*Defense attorney:* Did you — have you had a prior bad experience with the Juneau police in your family?

*Katzeek's father:* Yes.

*Prosecutor:* Objection, Your Honor.

*The Court:* Counsel approach, please.

(Bench conference as follows)

*The Court:* I think this is something you should have applied for outside the presence of the jury. But what are you getting into?

*Defense attorney:* I'm getting into very briefly that his family has had a lawsuit against [the Juneau Police Department] for a wrongful death.

*The Court:* In — you're referring to the death of John Katzeek's sister?

*Defense attorney:* Yes.

*The Court:* How is that relevant to this?

*Defense attorney:* This shows that how he was treated by — it goes to the police bias.

*The Court:* I'll sustain the objection. It's 404 and I — that's 404 evidence unless you have some evidence that one of the officers involved in this case did something. The Juneau Police Department is not a person and I'm not sure that you can attribute bad acts of another officer to Officer Warnaca.

*Defense attorney:* Okay.

On appeal, Katzeek argues that the trial court erred when it sustained the prosecutor's objection on the ground that the Juneau Police Department lawsuit was impermissible evidence under Alaska Evidence Rule 404. Katzeek also asserts that his constitutional right to confrontation was violated when he was prevented from asking his father about the family's wrongful death lawsuit against the Juneau Police Department.

Given the way the issue was litigated, we find no abuse of discretion in the trial court's exclusion of this evidence.<sup>2</sup> Katzeek's attorney made no proffer that any of the police involved in Katzeek's case were involved in the wrongful death lawsuit.<sup>3</sup> Nor did he show that any of the police officers were aware of the lawsuit or even that there was good reason to presume that they were aware of the lawsuit.<sup>4</sup> In the absence of such proffers, we agree with the trial court that the mere existence of the lawsuit, standing alone, was not evidence of any individual police bias.<sup>5</sup>

We also note that even if we were to conclude that the trial court erred, we would still be left without any factual basis from which we could assess the prejudice of such an error. Based on the record currently before us, we know nothing about the

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<sup>2</sup> See *State v. Carpenter*, 171 P.3d 41, 63 (Alaska 2007) ("We review evidentiary rulings for an abuse of discretion, although whether the trial court applied the correct legal standard presents a question of law that we review de novo.").

<sup>3</sup> Cf. *Porter v. United States*, 561 A.2d 994, 996 (D.C. Cir. 1989) ("The general rule for using a pending civil action to prove bias of a witness is that the action must involve either the same parties, the same facts, or the same acts constituting the offense at issue.").

<sup>4</sup> *People v. Simmons*, 513 P.2d 193, 195 (Colo. 1973) (holding that, upon objection, defense counsel was required to proffer evidence of investigating officer's actual knowledge of pending lawsuit against employer to use such information to show officer's bias).

<sup>5</sup> See *Vaska v. State*, 135 P.3d 1011, 1019 (Alaska 2006) (recognizing that an appellate court ordinarily has broad authority to affirm a trial court's ruling on any legal theory established in the appellate record).

wrongful death lawsuit other than its existence. We do not know what the allegations were or which officers were involved or even when it was filed. Moreover, Katzeek has not explained in his brief why the jury's knowledge of the family's wrongful death lawsuit would have had any effect on the jury's deliberations in this case.

The judgment of the superior court is AFFIRMED.